



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 4248-99
4 August 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: EX-CAPT [REDACTED], USMCR [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 13 Apr 99 w/attachments
(2) HQMC MMSR-5 ltr dtd 7 Jan 99 w/encl
(3) HQMC PERB memo dtd 29 Jun 99 w/encl
(4) HQMC RAM/CMT memo dtd 15 Jun 99
(5) Memo for record dtd 14 Jul 99
(6) Subject's E-mail dtd 18 Jul 99
(7) Memo for record dtd 21 Jul 99
(8) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that his naval record be corrected by removing the fitness report for 1 November 1995 to 11 July 1996, a copy of which is at Tab A. As indicated in paragraph 3.e below, the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board has directed removal of this report. Petitioner also requested removing all documentation of the delay of his promotion to major, pay grade O-4, and removal from the Fiscal Year (FY) 1997 Major Selection Board promotion list. Copies of such documents in his Official Military Personnel File (OMPF) are at Tab B. He further requested restoration to the promotion list and promotion to major, with a date of rank reflecting selection by the FY 1997 Major Selection Board. By implication, he requested removing his failures by the FY 1999 and 2000 Reserve Major Selection Boards. Finally, he requested setting aside his resignation from the Marine Corps Reserve on 1 June 1999, and restoring him to inactive duty in the Reserve, but in the grade of major.

2. The Board, consisting of Messrs. Goldsmith and Morgan and Ms. Moidel, reviewed Petitioner's allegations of error and injustice on 21 July 1999, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies which were available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner received the contested adverse fitness report for 1 November 1995 to 11 July 1996 (Tab A) while serving as an infantry officer in the grade of captain, pay grade O-3. In "general value to the service," he was marked in the "UN" (unsatisfactory) block, the lowest possible, with seven officers marked above him in the "OS" (outstanding) block, the highest possible, and none with or below him. All other observed marks were "OS," including item 14g (judgment). The "qualified for promotion" block was marked "no." The reporting senior's comments included the following:

This is an adverse fitness report due to [Petitioner] being relieved of his duties as the Battalion Operations Officer on 11 July, 1996 by the Commanding Officer, BLT [Battalion Landing Team] 3/5. The reason for being relieved is an officer integrity violation. Specifically his reporting an inaccurate PFT [physical fitness test] score of 300 [perfect] on 11 April 1996. The mark in 5(a) ["RDNT" (required, did not take PFT)] above reflects that we have no accurate score for [Petitioner]... Integrity is the ultimate requirement of a Marine Corps Officer [sic], [Petitioner's] violation of this special trust and confidence renders him neither qualified for promotion or further valuable service in the Marine Corps...

Petitioner's seven-page rebuttal statement denied giving a false PFT score regarding the number of sit-ups he had properly performed. [Note: The Marine Corps PFT requires that 80 sit-ups be completed in two minutes or less for a perfect score of 100 on this portion of the test.] Petitioner's reviewing officer stated he felt Petitioner deserved a mark of "BA" (below average), the second lowest possible, in item 14g; and he devoted two pages to explaining why he believed Petitioner had been guilty of an integrity violation concerning the reporting of his sit-ups for the PFT. Petitioner also submitted a one-page rebuttal to the reviewing officer comments, again denying any misconduct.

d. Petitioner was selected by the FY 1997 Major Selection Board, and he was scheduled to be promoted on 1 October 1996. His promotion was delayed by reason of the contested fitness report. He resigned his Regular Marine Corps commission on 31 May 1997 and accepted a commission as a captain in the Marine Corps Reserve, where he was on inactive duty. In light of the misconduct described in the contested fitness report, the Secretary of the Navy removed Petitioner from the promotion list on 22 July 1997 (second document at Tab B). Petitioner failed of selection by the FY 1999 Reserve Major Selection Board. For reasons unclear, HQMC sent him the letter at enclosure (2), advising him that his failure of selection by the FY 1999 Reserve Major Selection Board constituted his second failure of selection; that this meant his separation had to occur on or before 1 June 1999; and that he could request resignation in lieu of being involuntarily discharged. The enclosure to this letter, also at enclosure (2), was a resignation form which Petitioner elected to complete,

indicating a request to resign his Reserve commission on 1 June 1999. On the basis of this resignation, he was discharged from the Marine Corps Reserve on 1 June 1999.

e. Enclosure (3) is the report of the HQMC PERB in Petitioner's case. The report reflects the PERB decision to remove the fitness report for 1 November 1995 to 11 July 1996. A member of this Board's staff contacted the Chairperson of the PERB to determine the basis for their decision, but was informed that no record of that information had been kept.

f. Enclosure (4) is the advisory opinion from the HQMC Reserve Career Management Team, Reserve Affairs Manpower Branch, Reserve Affairs Division (RAM/CMT), recommending approval of Petitioner's request to remove documentation of his removal from the promotion list and reinstate him on the FY 1997 Major Selection Board promotion list. This advisory opinion includes the following:

...
2...Removal of [the contested fitness] report removes the allegation of an integrity violation from [Petitioner's] record. It was this alleged integrity violation which caused [Petitioner's] promotion to Major [sic] to be first delayed, and subsequently withheld.

3. In our opinion, the petitioned [report] was the sole cause for the delay and later the withholding of [Petitioner's] promotion to Major [sic]. Removal of this report from the record essentially removes the allegations of a perceived integrity violation...

g. The memorandum for the record at enclosure (5) documents that the HQMC Promotion Branch (MMPR-1) informed a member of the Board's staff about the facts of Petitioner's case, and advised that had he been promoted from the FY 1997 Major Selection Board, he would have received a date of rank and effective date of 1 October 1996.

h. By the communication at enclosure (6), Petitioner advised that he does not want to return to active duty, but does desire to be reinstated in the Marine Corps Reserve as a major; and that if he is reinstated on the promotion list, he wishes to have the date of rank he would have received, had he not been removed.

i. The memorandum for the record at enclosure (7) reflects that HQMC MMPR-1 informed a member of the Board's staff that Petitioner failed of selection by both the FY 1999 and 2000 Reserve Major Selection Boards.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (4), the Board finds an injustice warranting full relief.

The Board agrees with HQMC RAM/CMT in concluding that the documentation reflecting the delay of Petitioner's promotion and his removal from the promotion list should be removed; that he should be reinstated to the promotion list; and that his record should be corrected to show he was promoted to major. In light of the information at enclosure (5), they find his record should show he was assigned a major date of rank and effective date of 1 October 1996.

As the Board finds Petitioner should have been promoted to major while still in the Regular Marine Corps, they find his failures by the FY 1999 and 2000 Reserve Major Selection Boards should be removed.

In light of Petitioner's wish not to be returned to active duty, but to be restored to inactive duty in the Marine Corps Reserve, the Board finds his resignation from the Regular Marine Corps should not be disturbed. Because of their finding that Petitioner should have been promoted to major with a date of rank of 1 October 1996 while he was still in the Regular Marine Corps, the Board further finds his record should be corrected to show that when he was commissioned in the Marine Corps Reserve following his resignation from the Regular Marine Corps, he was appointed a major with the same date of rank of 1 October 1996.

The Board finds that Petitioner would not have resigned from the Reserve on 1 June 1999 but for the injustices in his case. Accordingly, they recommend correcting his record to show he did not resign from the Reserve, but retained status as an officer on inactive duty.

In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing all documentation relating to the delay of his promotion and removal from the FY 1997 Major Selection Board promotion list, to include the documents on the "C" fiche of his OMPF, at row E, frames 5 through 14, and row F, frames 1 through 13.

b. That his record be corrected further to show he was not removed from the FY 1997 Major Selection Board promotion list, but was promoted to major in the Regular Marine Corps with a date of rank and effective date of 1 October 1996.

c. That his record be corrected further to show he did not fail of selection by the FY 1999 and 2000 Reserve Major Selection Boards.

d. That his record be corrected further to show that when he was commissioned in the Marine Corps Reserve after his resignation from the Regular Marine Corps on 31 May 1997, it was in the grade of major with a date of rank of 1 October 1996.

e. That his record be corrected further to show he did not resign from the Marine Corps Reserve and was not discharged from the Marine Corps Reserve on 1 June 1999, but retained status as a major on inactive duty in the Marine Corps Reserve after that date.

f. That any material or entries relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

g. That any material directed to be removed from Petitioner's naval record be returned to this Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder

Jonathan S. Ruskin
JONATHAN S. RUSKIN
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

W. Dean Pfeiffer
W. DEAN PFEIFFER

AUG 8 1999

Reviewed and approved:

Karen S. Heath

KAREN S. HEATH
Principal Deputy Assistant Secretary of the Navy
(Manpower and Reserve Affairs)

4248-99



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VA 22134-5103

IN REPLY REFER TO:

1811

MMSR-5

7 Jan 99

From: Commandant of the Marine Corps
To: Captain [REDACTED] USMCR
[REDACTED]

Subj: STATUS IN THE MARINE CORPS RESERVE

Ref: (a) Title 10, U.S. Code

Encl: (1) Election of Option Form

1. This letter is forwarded as a courtesy to ensure you understand the laws and policies pertaining to your status in the United States Marine Corps Reserve.
2. On 1 October 1996, sections 14505 and 14513 of the reference became effective. These sections require the separation or retirement of a captain who has twice failed selection for promotion to the next higher grade. Such action must be effected no later than the first day of the seventh month following the approved report of the selection board on which the officer was considered the second time.
3. Our records reflect that you were not selected for promotion by the Fiscal Year 1999 Reserve Major Selection Board which constituted your second failure of selection. The results of that Board were approved by the Secretary of the Navy on 10 November 1998; accordingly, your separation must occur on or before 1 June 1999.
4. On 11 December 1998, your last full anniversary year, you were credited with 13 years of qualifying service. You may request resignation in lieu of being involuntarily discharged.
5. If you wish to resign, you must submit a request in writing to your parent command or to this Headquarters (Attn: MMSR-5) a minimum of 4 months in advance of the effective date. The effective date you select must be no later than 1 June 1999. Omission of a request will result in your involuntary separation (discharge) from the Marine Corps Reserve on 1 June 1999.
6. The enclosure contains an Election of Option form to assist you in making your decision. Please forward the form with your desires to your parent command as soon as possible.



4248-99

FEB 9, 99

(DATE)

From: Captain [REDACTED] SMCR
To: Commandant of the Marine Corps (MMSR-5)
Via: Commanding General, [REDACTED] Support Command,
15200 [REDACTED]

Subj: ELECTION OF OPTION FORM

Ref: (a) CMC ltr 1811 MMSR-5 of 7 Jan 99

1. Per the reference, I elect the following option:

() I REQUEST TO RESIGN MY RESERVE COMMISSION EFFECTIVE

1 JUN, 99.

[REDACTED]
SIGNATURE

NOTE: THIS FORM MUST BE RECEIVED NO LATER THAN 1 FEBRUARY 1999.

Enclosure (1)

NOTE 2: I HAVE BEEN OUT OF TOWN AND DID NOT REC'D
THIS NOTE UNTILL AFTER NOTE 1 DATE.

4248-99



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1610
MMER
29 JUN 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF CAPTAIN [REDACTED]
[REDACTED] USMCR

Encl: (1) Copy of CMC ltr 1610 MMER/PERB of 9 Jun 99
(2) CMC Advisory Opinion 1600 MMOA-4 of 15 Jun 99

1. As evidenced by the enclosure, PERB removed from Captain [REDACTED] official military record, the fitness report for the period 951101 to 960711 (CH).

2. We defer to BCNR on the issue of Captain [REDACTED] request for the removal of his failure of selection and reinstatement to the Major selection list. Enclosure (2) is furnished to assist in resolving those matters.

[REDACTED]
[REDACTED]
Head, Performance Evaluation
Review Branch
Personnel Management Division
By direction of the Commandant
of the Marine Corps

4248-49



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1610
MMER/PERB
JUN 9 1999

From: Commandant of the Marine Corps
To: Capt. [REDACTED] SMCR
1220 [REDACTED]

Subj: CORRECTION OF NAVAL RECORD

Ref: (a) MCO 1610.11C

1. Per the reference, the Performance Evaluation Review Board has reviewed allegations of error and injustice in your Naval record. Having reviewed all the facts of record, the Board has directed that your Naval record will be corrected by removing therefrom the following fitness report(s):

<u>Date of Report</u>	<u>Reporting Senior</u>	<u>Period of Report</u>
22 Jul 96	[REDACTED]	951101 to 960711 (CH)

2. There will be inserted in your Naval record a memorandum in place of the removed report. The memorandum will contain appropriate identifying data concerning the report and state that it has been removed by direction of the Commandant of the Marine Corps and cannot be made available in any form to selection boards and reviewing authorities. It will also state that such boards may not conjecture or draw any inference as to the nature of the report or the events which may have precipitated it, unless such events are otherwise properly a part of the official record. The Automated Fitness Report System (the data base which generates your Master Brief Sheet) will be corrected accordingly.

3. The Commandant of the Marine Corps is not empowered to grant or deny the removal of failure(s) of selection from a Naval record. Accordingly, your case will be forwarded to the Board for Correction of Naval Records (BCNR) for consideration of that issue.

[REDACTED]
By direction

4248-99



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1600
RAM/CMT
15 Jun 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR PETITION FOR [REDACTED]
USMCR

Ref: (a) MMER Request for Advisory Opinion in the case of
Captain [REDACTED] USMCR of
9 Jun 99

1. Recommend approval of Captain [REDACTED] request for removal of documentation from the record which relate to the withholding of his promotion to Major as well as his request for reinstatement to the Fiscal Year 1997 Major Selection List.

2. Per the reference, we reviewed Captain [REDACTED]'s record and his petition. Captain [REDACTED] was selected for promotion to the rank of Major by the FY 97 USMC Major Selection Board. This promotion was delayed upon request of the Commanding Officer, 31st MEU, and Captain [REDACTED]'s name was eventually removed from the list by the Secretary of the Navy on 22 Jul 97. The basis for this action stems from an alleged integrity violation as contained in Section C of the CH fitness report for the period 951101-960711. Captain [REDACTED] successfully petitioned the Performance Evaluation Review Board for the removal of this report from his record. This report was removed on 9 Jun 99. Removal of this report removes the allegation of an integrity violation from Captain [REDACTED]'s record. It was this alleged integrity violation which caused Captain [REDACTED] promotion to Major to be first delayed, and subsequently withheld.

3. In our opinion, the petitioned was the sole cause for the delay and later the withholding of Captain [REDACTED] promotion to Major. Removal of this report from the record essentially removes the allegations of a perceived integrity violation. Therefore, we recommend approval of Captain [REDACTED] request for removal of

Subj: BCNR PETITION FOR CAPTAIN [REDACTED]
USMCR

documentation from the record which relate to the withholding of his promotion to Major as well as his request for reinstatement to the Fiscal Year 1997 Major Selection List.

[REDACTED]
Lieutenant Colonel, U. S. Marine Corps
Head, Reserve Career Management Team
Reserve Affairs Manpower Branch
Reserve Affairs Division

[REDACTED]

From: [REDACTED] s [mailto:[REDACTED]@yahoo.com]
Sent: Sunday, July 18, 1999 6:53 PM
To: [REDACTED]
Subject: Re: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION

--- " [REDACTED] <[REDACTED]@HQ.NAVY.MIL> wrote:

> [REDACTED]
>
> I HAVE BEEN ASSIGNED TO WORK YOUR BCNR APPLICATION.
> IF WE PLACE YOU BACK ON
> THE FY-97 USMC MAJ SEL LIST, YOU WOULD BE GIVEN THE
> OPTION OF COMING BACK ON
> ACTIVE DUTY AS A REGULAR OFFICER, OR BEING
> REINSTATED IN THE RESERVE
> COMPONENT AS A MAJ. PLEASE ADVISE AS TO YOUR
> DESIRES. POC, THE
> UNDERSIGNED [REDACTED]

>

> B [REDACTED]

>

SIR:

THANK YOU FOR TAKING THE TIME TO CONTACT ME AND YOUR EFFORTS ON MY BEHALF ON MY BCNR PACKAGE. IF PLACED BACK ON THE FY-97 MAJ SEL LIST I WOULD LIKE TO BE REINSTATED AS A MAJOR IN THE RESERVES. WHILE THE POSSIBLE OPTION OF RETURNING TO ACTIVE DUTY IS INTRIGUING, I HAVE A DIFFERENT CAREER THAT I'M EXTREMELY HAPPY W/, JUST BOUGHT A HOUSE, AND WILL BE GETTING MARRIED SOON.

IF PLACED BACK ON THE FY-97 MAJ SELECT LIST, I REQUEST AN ADJUSTED DATE OF RANK OF MAJ EFFECTIVE UPON REINSTATEMENT ON THE SELECT LIST. MY REASON FOR SEEKING AN ADJUSTED DATE OF RANK IS TO OBTAIN THE OBSERVED TIME IN GRADE NECESSARY FOR FUTURE COMPETITIVE SELECTIONS THAT I WOULD HAVE RECVD TO THIS POINT HAD I NOT BEEN REMOVED FROM THE SELECT LIST.

I HAVE RECENTLY MOVED AND HAVE PROVIDED MY NEW ADDRESS/TELE# FOR FUTURE CORRESPONCE:

[REDACTED]
[REDACTED]
[REDACTED]

SINC/
[REDACTED]

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MEMORANDUM FOR THE RECORD

BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR)
PERFORMANCE SECTION

2 NAVY ANNEX, SUITE 2432

WASHINGTON, DC 20370-5100

TELEPHONE: DSN [REDACTED] 301-414-9837, OR [REDACTED]

FAX: DSN [REDACTED] 301-414-9837, OR [REDACTED]

E-MAIL: [REDACTED]@NAVY.MIL

DATE: 14JUL99

DOCKET NO: [REDACTED]

PETITIONER (PET): EX-O [REDACTED] USMCR

PARTY CALLED: [REDACTED] USMC MMRP-1

TELEPHONE NUMBER: [REDACTED]

WHAT I SAID: I ASKED [REDACTED] WHY SEL BDS PET FAILED BEFORE AND IF PET HAD BEEN PROMOTED BY THE FY-97 MAJ SEL BD, WHAT HIS DOR AND EFF DATE WOULD HAVE BEEN.

WHAT PARTY SAID: I WAS INFORMED THAT PET WAS REMOVED FROM THE FY-97 USMC MAJ SEL BD PROMOTION LIST, RESIGNED HIS REGULAR COMMISSION ON 31MAY97, FOS BEFORE THE FY-99 USMCR MAJ SEL BD, AND RESIGNED HIS RESERVE COMMISSION ON 1JUN99. HAD HE BEEN PROMOTED BY THE FY-97 USMC MAJ SEL BD, HE WOULD HAVE RECEIVED A DOR AND EFF DATE OF 1OCT96

[REDACTED]
[REDACTED]
[REDACTED]

21 July 1999

MEMO FOR RECORD

Case of: Ex-Capt [REDACTED] USMC, [REDACTED]

I called [REDACTED] of HQMC (MMPR-1) and was advised that [REDACTED] has two failures by Reserve promotion boards: FY 99 and FY 00. He said the result of the FY 00 Reserve Major Selection Bd was just released in the last week (specifically, last night).

[REDACTED] *Rushin*
[REDACTED]
Head, Performance Section